

SS-8 Determination—Determination for Public Inspection

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| Occupation 02SAL.25 Salesperson | Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor |
| UILC | Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes |

Facts of Case

The firm is in the business of selling tickets and advertising for [REDACTED]. The worker was engaged by the firm to be responsible for the sales of group tickets to organizations in the [REDACTED] area. The firm reported the worker's remuneration on Form 1099-MISC for 2013.

Information from the parties supports that the position was based on the worker calling customers in defined areas in [REDACTED]. The firm determined the methods by which the worker performed his services. If problems or complaints occurred, the worker contacted the firm for resolution. The worker was required to maintain a log of sales calls. Orders were submitted to and subject to approval by the firm. The worker was free to set his own hours and schedules. The worker generally provided his services on the firm's premises. He was required to attend sales meetings. The worker was required to perform his services personally.

The firm provided the desk, phone, computer, and property. The firm provided the worker a cell phone allowance and auto allowance. It paid the worker on a commission basis. The firm allowed a drawing account for advances. It did not cover the worker under workers' compensation. Neither party indicated an investment by the worker in the firm or a related business.

The firm did not make general benefits available to the worker. It provided the worker with business cards. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the worker terminated the work relationship with a two-week notice.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, while the firm relied upon the worker's prior training and experience to perform his services, it still retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. The worker was required to maintain a log of sales calls and attend weekly sales meetings. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. The worker was required to perform his services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. These facts show that the firm retained behavioral control over the services of the worker.

Factors that illustrate whether there was a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The firm paid the worker on a commission basis. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss. The firm provided the worker cell phone and auto allowances. If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. These facts show that the firm retained control over the financial aspects of the worker's services.

Factors that illustrate how the parties perceived their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed were part of the service recipient's regular business activities. In this case, the worker performed his services on a continuing basis. He performed his services under the firm's name. The worker was not engaged in an independent enterprise, but rather the sales and other services performed by the worker were a necessary and integral part of the firm's business. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. Although the firm did not provide general benefits to the worker, he terminated the work relationship without incurring a liability. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. These facts show that the firm retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.